IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.08.2005

CORAM:

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.A. No. 3545 of 2002
and
W.P. No. 40513 of 2002

M/s.Nortan Intec Rubbers Pvt. Ltd.,
Gummidipoondi 601 201.

Appellant in WA 3545/2002/
Petitioner in WP 40513/02

Vs.

1. State Industries Promotion Corporation
of Tamilnadu Ltd., rep. by its Chairman
and Managing Director,
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai-8.

2. Department of Industries,
Government of Tamilnadu
rep. by its Secretary,
Fort St. George, Chennai-9.

3. Director of Industries & Commerce
and Chairman of Sub-Committee SLIIC
rep. by its Commissioner,
Directorate of Industries & Commerce,
Chepauk, Chennai-5.

4.Indian Overseas Bank,
rep. by its Senior Manager,
150 K.H.Road, Ayanavaram,Chennai 600 023.

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5. Tamilnadu Industrial Investment Corporation
rep. by its Managing Director,
Nandanam, Chennai.

Respondents/Respondents

Appeal under clause 15 of the Letters Patent against the order of this Court passed in WPMP No.60101 of 2002 in W.P.No.40513 of 2002 dated 7.11.2002.

Petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the impugned letter dated 3.7.2002 bearing Ref.No.PF/OP1/484/2002 of the first respondent and quash the same and further direct the first respondent to apply circular No.33/91 dated 9.9.91 of the first and fifth respondents and refund a sum of Rs.3.57 lakh to the petitioner.

For Appellant in WA
& for Petitioner in WP :: Mr.C.Saravanan
For Respondent -do- No. 1 :: Mr.L.G.Sahadevan
For Respondents in -do- 2 & 3 :: Mr.V.Raghupathi,
Government Pleader
For Respondent No.5 :: Mr.Jayesh B Dolia for
M/s.Aiyar & Dolia.

JUDGMENT

(Judgment of the Court was delivered by
The Hon'ble Chief Justice.)

Heard the learned counsel for the parties. Writ Appeal No.3545 of 2002 has been filed against the interim order passed in W.P.No.40513 of 2002. The aforesaid writ petition also is posted before us. In our opinion W.P.No.40513 of 2002 is not maintainable and hence it is liable to be dismissed on this preliminary ground itself. It may be mentioned that the writ petitioner had earlier filed W.P.No.40225 of 2002 which was dismissed as withdrawn by this Court on 1.11.2002 by the following order:

> "The learned counsel appearing for the petitioner seeks permission to withdraw the WP as not pressed. He has also made an endorsement in the bundle to that effect. Acting on the said statement, the writ petition is dismissed as withdrawn. Consequently the connected W.M.Ps. are closed."

2. A perusal of the above order shows that there is nothing mentioned therein saying that the petitioner is given liberty to file a fresh writ petition. However, learned counsel for the writ petitioner

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submits that the learned counsel had made an endorsement on the bundle which reads as follows:

> "Petitioner may be permitted to withdraw the writ petition with a liberty to file a fresh writ petition."

3. In our opinion the endorsement made by the counsel does not amount to an order of a judge. Unless there is an order of the Court that the petitioner is being permitted to withdraw with liberty to file a fresh writ petition, in our opinion no second writ petition is maintainable in view of the decision of the Supreme Court in Sarguja Transport Service v. S.T.A.Tribunal, Gwalior, AIR 1987 S.C. 88 in which the Supreme Court observed in paragraph 9 as follows:-

> "The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art.226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art.226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right

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guaranteed under Art.21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open.

4. Thereafter the same view was repeated by the Supreme Court in Avinash Nagra v. Navodaya Vidyalaya Samiti, (1997)2 SCC 534 in which it was observed in paragraph 13 as follows:-

> "The High Court also was right in its conclusion that the second writ petition is not maintainable as the principle of constructive res judicata would apply. He filed the writ petition in first instance but withdrew the same without permission of the Court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court in applying the correct principle of law. Thus considered we find no merit in the appeal for interference."

5. Thereafter in the case of Haryana State Coop. Land Development Bank v. Neelam, (2005)5 SCC 91 the Supreme Court followed the decision in Sarguja Transport Service case cited supra.

6. In view of the above we are of the opinion that W.P.No.40513 of 2002 is not maintainable and it is accordingly dismissed. Hence W.A.No.3545 of 2002 becomes infructuous and it is also dismissed. No costs. Connected WPMP Nos.60100 and 60101 of 2002 and WAMP No.5896 of 2002 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ns.

To

1. The Chairman and Managing Director,
   State Industries Promotion Corporation of Tamilnadu Ltd.,
   No.19A, Rukmani Lakshmipathy Road, Egmore, Chennai-8.

2. The Secretary,
   Department of Industries,
   Government of Tamilnadu,
   Fort St. George, Chennai-9.

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3. The Commissioner,
   Director of Industries & Commerce
   and Chairman of Sub-Committee SLIIC
   Directorate of Industries & Commerce,
   Chepauk, Chennai-5.

4. The Managing Director,
   Tamilnadu Industrial Investment Corporation
   Nandanam, Chennai.

5.The Senior Manager,
Indian Overseas Bank,
150 K.H.Road, Ayanavaram,Chennai 600 023.

+2ccs to Mr.C.Saravanan, Advocate Sr 34021 and 34022

+2ccs to MR.L.G.Sahadevan, Advocate Sr 34023 & 34024

+1cc to M/s. Aiyar & Dolia Advocate Sr 34180

+1cc to Govt. Pleader Sr 33994

MAB (CO)
km/18.8.

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